

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

FERMIN CORTEZ, on behalf of)	
themselves and all other similarly)	
situated individuals, et al.,)	8:08CV90
)	
Plaintiffs,)	
)	
v.)	ORDER
)	
NEBRASKA BEEF, INC., and)	
NEBRASKA BEEF, LTD.,)	
)	
Defendants.)	
_____)	

DAVID CHUOL, on behalf of himself)	
and all other similarly situated)	
individuals,)	8:08CV99
)	
Plaintiffs,)	
)	
v.)	ORDER
)	
NEBRASKA BEEF, Ltd.,)	
)	
Defendant.)	
_____)	

This matter is before the court on plaintiffs' objection to defendants' witness list on the basis that the non-class witnesses were in some cases identified during discovery, but none were disclosed to the plaintiffs as potential witnesses. Filing No. 305. Also before the court is a motion for leave to allow non-class members and possibly class members to testify at trial if the need arises. Filing No. 307. The third matter before the court is an objection to a witness list also filed by the defendants on the basis that the plaintiffs do not sufficiently represent the class. Filing No. 308.

Filing No. 305

The court will grant the plaintiffs' motion, consistent with this court's ruling for Filing No. 307. See Fed. R. Civ. P. 26(a). If the defendant did not identify the individual as a

potential witness, then the witness will not be allowed to testify except in impeachment or rebuttal.

Filing No. 307

The court will deny defendants' motion except the defendants may call witnesses who are class members AND were previously identified by either party as "may call witnesses" or those who were identified by the plaintiffs as potential witnesses (Batten and Garza). Except for rebuttal or impeachment, all witnesses must have previously been identified as potential witnesses at trial.

Filing No. 308

The court summarily denies this request as it goes to the issue of class certification. The court has addressed this issue with counsel on numerous occasions and will not revisit the issue again.

THEREFORE, IT IS ORDERED:

1. Plaintiffs' motion to restrict defendants' witnesses, Filing No. 305, is granted in part as set forth herein.
2. Defendants' motion to add witnesses, Filing No. 307, is denied as set forth herein.
3. Defendants' motion, Filing No. 308, is summarily denied.
4. The Clerk of Court is ordered to term Filing No. 267 as it has already been addressed by this court.

DATED this 26th day of April, 2011.

BY THE COURT:

s/ Joseph F. Bataillon
Chief United States District Judge